

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.693, 699 and 818 of 2019

COMMON ORDER:

These three Revisions arise between the same parties under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1961 (for short 'the Act') and so they are being disposed of by this common order.

2. The respondent herein filed R.C.No.1 of 2016 on the file of the Principal Rent Controller, Secunderabad alleging that the suit schedule property, which is non-residential premises, was purchased by him under a Registered Sale Deed/Ex.P1 dt.10.12.2014; that petitioner is a tenant of the RC schedule property under the vendor of the respondent at a monthly rent of Rs.1,200/- per month exclusive of electricity and property tax; that after purchase of the property, respondent and his vendor Smt Manju Devi, orally informed the petitioner about the sale of the property to the respondent; that in spite of the same, petitioner was remitting monthly rent to the previous owner Smt Manju Devi; and thus the petitioner had committed willful default in payment of rents from 01.01.2015 to 31.12.2015. It was also contended that the respondent was himself doing business in a rented premises at Nalabazar, Secunderabad belonging to one Kiran Goud and he intended to shift his business to the RC schedule premises which is fit and suitable for his requirement,

and therefore, the petitioner should be evicted from the RC schedule property.

3. It is important to note that RC.No.1 of 2016 was presented by the respondent through his GPA Holder one Ayub Yar Khan.

4. Counter affidavit was filed by the petitioner opposing the grant of relief to the respondent. While admitting that he is a tenant of the RC schedule premises on a monthly rent of Rs.1,200/- per month, it was denied by the petitioner that he was informed about the sale of property by the original owner, Smt Manju Devi, or by the respondent at any time. He contended that there is no necessity for him to tender rents to the respondent in the absence of letter of Attornment executed by the petitioner, and the petitioner has every right to send the monthly rent through Money Order to the previous owner, Smt Manju Devi. He also denied that the respondent bonafidely requires the RC schedule premises.

5. Before the Rent Controller, the respondent examined the GPA Holder as PW1 and marked Exs.P1 and P2. Petitioner examined RWs.1 to 4 and marked Exs.R1 to R18.

6. By order dt.09.02.2017, the Rent Controller allowed the RC.No.1 of 2016. He held that there was willful default in payment of rents from 01.01.2015 to 31.12.2015 by the petitioner to the respondent and also that the RC schedule property is bonafidely required by the respondent.

7. Challenging the same, petitioner filed RA.No.53 of 2017 before the Chief Judge, City Small Causes Court, Hyderabad.

CRP.No.818 of 2019

8. In that appeal, respondent filed I.A.No.295 of 2018 under Order XLI Rule 27 CPC to receive certified copy of the order dt.05.01.2016 in I.A.No.30 of 2016 in R.C.No.1 of 2016 along with GPA dt.04.01.2016 executed by the respondent in favour of his Agent, Ayub Yar Khan, as additional evidence.

9. This application was opposed by the respondent.

10. By order dt.29.01.2019, the Appellate Authority under the Act allowed the said I.A. holding that the order passed in I.A.No.30 of 2016 was already part of the record, and in that I.A., permission was accorded to the respondent to be represented through GPA holder and prosecute the matter along with the GPA document, and the Court can take judicial notice of these documents which are also on record under Section 56 of the Indian Evidence Act, 1872.

11. Challenging the same, CRP.No.818 of 2019 was filed by the petitioner.

CRP.No.699 of 2019

12. The Appellate Authority dismissed RA.No.53 of 2017 by judgment dt.29.01.2019 confirming the order passed by the Rent Controller.

13. Both the Rent Controller as well as the Appellate Authority relied upon the admission of RW1 in cross-examination that he filed a suit O.S.No.153 of 2015 against the respondent as well as the previous owner Smt Manju Devi, and that Ex.P3 is the copy of the plaint and he knew that the respondent purchased the RC schedule property even prior to the filing of the said suit.

14. The said suit was actually presented on 07.04.2015 for a temporary injunction restraining the respondent and his vendor from evicting the petitioner from the suit schedule premises and it was decreed on 12.04.2018 restraining the respondent and his vendor by way of perpetual injunction from interfering with the possession of the petitioner over the suit schedule property without due process of law.

15. Both the Rent Controller as well as the Appellate Authority therefore held that since the petitioner was aware about the purchase of the RC schedule premises by the respondent on 10.12.2014 even by the time he filed O.S.No.153 of 2015, Attornment of Tenancy of the petitioner took place and the petitioner was bound to pay rents to the respondent. They further held that petitioner deliberately avoided paying rents to the respondent though he was aware of the sale of the RC schedule property to the respondent and kept on sending Money Orders, Exs.R1 to R18, to the previous owner and this conduct shows that there was a willful default and intentional and deliberate avoiding of paying of rents to the respondent.

16. The lower Appellate Court also relied upon the judgment in ***Venkateswara Electrical Stores v. Rajender Singh***¹ wherein this Court had held that if a tenant is aware of change of ownership of leasehold premises and continues to deposit rents in the account of previous landlord, he is deemed to have committed willful default in payment of rent.

17. As regards plea of bonafide requirement raised by the respondent, both the Rent Controller as well as the Appellate Authority held that the respondent was carrying on business in a rented premises at Nalabazar, Secunderabad; that there is no evidence to show that the respondent was having another property at Gunfoundry where he was doing Jewellery business as was alleged by the petitioner; and as per the settled law, owner of a property is at liberty to use his premises for whatever kind of business he wants, and it is not for a tenant to dictate where the owner should do business. It held that the evidence of PW1 establishes the need and necessity of the landlord to commence his own business in the RC schedule property and the admissions in the cross-examination of RWs.2 to 4 in respect of the importance of the locality, which is a commercial locality, shows that his requirement is bonafide and he intends to demolish it, reconstruct it, and do business therein.

18. Assailing the order dt.29.01.2019 in RA.No.53 of 2017, petitioner filed CRP.No.699 of 2019.

¹ 2004(6) ALD 236

Contentions of both counsel in CRP.Nos.699 & 818 of 2019:

19. Heard Sri D.V.Seeta Ram Murthy, Senior Counsel appearing for Sri A.Suryanarayana, counsel for petitioner and Sri P.Ramchander, Counsel appearing for respondent.

20. Counsel for the petitioner contended that the GPA in favour of PW1 was executed by the respondent on the date of filing of the RC; that the respondent himself did not enter into witness box and depose regarding facts which are within his personal knowledge and on the basis of the sole testimony of the respondent's agent, who deposed as PW1, the Courts below could not have directed eviction of the petitioner. He also placed reliance on the judgment in ***Man Kaur(dead) By Lrs., v. Hartar Singh Sangha***².

21. Counsel for the respondent refuted the above contentions and stated that in the light of the admission in the cross-examination of RW1 that he knew about the purchase by the respondent of the RC schedule property prior to filing of O.S.No.153 of 2015 i.e., prior to 07.04.2015 itself, Attornment of Tenancy is automatic, and it was the duty of the petitioner to pay rents to the respondent, but instead, he sent Money Orders to the previous owner vide Exs.R1 to R18 wantonly and thus the finding as regards

² 2010(1) SCC 512

willful default in payment of rent cannot be said to be erroneous.

The Consideration by the Court (CRP.No.699 of 2019):

22. I have noted the contentions of both sides.

23. It is no doubt true that RC was filed through GPA Holder and it was that GPA Holder who gave evidence as PW1 on behalf of the respondent.

24. In ***Man Kaur***'s case (2 supra), the Supreme Court held in para 18 as under:

“We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

- (a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.
- (b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.
- (c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.
- (d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and

where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

- (e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.
- (f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.
- (g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

25. Therefore, normally, a Power of Attorney Holder, who has signed the plaint and instituted the suit but has no personal knowledge of the transaction can only give formal evidence about the validity of the Power of Attorney and filing

of the suit, and facts which require a state of mind, such as bonafide requirement, need to be proved by the principal and not by the agent.

26. So, the Supreme Court has held that the landlord, who seeks eviction of the tenant on the ground of his bonafide need, would have to give evidence himself and he cannot rely on the evidence of agent appointed by him under a GPA.

27. In view of the said principle of law, the finding of both the Rent Controller as well as the Appellate Authority, that the respondent bonafidely requires the RC schedule premises, though the respondent did not himself enter into the witness box and examined only his agent appointed under the GPA as PW1, cannot be sustained, and they are accordingly set aside.

28. However, coming to the issue of willful default in payment of rent, admittedly, RW1 stated in his evidence that he came to know that the respondent had purchased the RC schedule property prior to filing of O.S.No.153 of 2015 on 07.04.2015, and if so, he ought to have made payment of rents to the respondent and not to the previous owner of the property, Smt Manju Devi.

29. It is the contention of the respondent that he and his vendor informed the petitioner about the change of title to the property and asked him to attorn the tenancy.

30. Be that as it may, as held in ***Ambica Prasad v. Mohd. Alam & another***³ after the transfer of landlord's right in favour of the transferee, under Section 109 of the Transfer of Property Act, 1882, the transferee gets all the rights and liabilities of the landlord in respect of the subsisting tenancy. Section 109 does not insist that transfer will take effect only when the tenant attorns. The transferee would step into the shoes of landlord with all the rights and liabilities of the landlord in respect of the subsisting tenancy and there is no necessity for a specific act on the part of the tenant to attorn to the purchaser and the transfer is not dependent on such action on the part of the tenant. The Court has held that Attornment by Tenancy is not necessary to confirm the validity of transfer of the landlord rights.

31. This legal position is not disputed by the counsel for the petitioner.

32. In ***Venkateswara Electrical Stores***'s case (1 supra), this Court had categorically held that if the tenant is aware of change of ownership of leasehold premises and still

³ 2015(13) SCC 13

continues to deposit rent in the account of the previous landlord, he would be committing willful default in payment of rent.

33. In view of the above legal position, it cannot be said that either the Rent Controller or Appellate Authority have committed any error of law or fact in directing eviction of the petitioner from the RC schedule property on the ground of willful default.

34. Therefore, CRP.No.699 of 2019 is liable to be dismissed.

Consideration of pleas in CRP.No.818 of 2019 :

35. Coming to CRP.No.818 of 2019, since the orders dt.05.01.2016 in I.A.No.30 of 2016 in Rc.No.1 of 2016 and the GPA filed along therewith are already part of the record of the RC, filing of the same by the respondent in RA.No.53 of 2017 vide I.A.No.295 of 2018 under Order XLI Rule 27 of CPC was in fact unnecessary. No prejudice is caused to the petitioner even if the said I.A. is allowed, because the said material is already part of the record of the RC.

36. Therefore, CRP.No.818 of 2019 is also liable to be dismissed.

CRP.No.693 of 2019 :

37. Coming to CRP.No.693 of 2019, this Revision arises out of R.A.No.52 of 2017 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad filed against the order in RC.No.26 of 2016 filed by the respondent for fixation of fair rent of the RC schedule property under Section 4 of the Act.

38. Respondent sought fixation of fair rent @ Rs.100/- per sq.ft., contending that property is located in a commercial locality near Railway Station Road, Secunderabad and it would fetch the said rent but the petitioner was only paying rent at Rs.1,200/- per month.

39. Counter was filed by the petitioner opposing the said application and contending that the respondent, having already filed petition for eviction of the petitioner, he cannot file the application for fixation of fair rent. It was also denied that the prevailing market rate in the locality is Rs.100/- per sq. ft.

40. In the RC, respondent examined the GPA Holder, Arub Yar Khan, as PW1 and marked Exs.P1 to P3. Petitioner examined RWs.1 to 4.

41. The Rent Controller as well as the Appellate Authority fixed the fair rent @ Rs.75/- per sq.ft. relying on the evidence of RW3, brother of the petitioner stating that within the vicinity of the RC schedule property, the rent fetched would be Rs.100/- per sq.ft. It also relied on the evidence of Rws.2 & 3, who have stated that the RC schedule property is in a busy locality having all commercial activities. It also observed that petitioner did not lead any evidence to show that the rent in the locality would be only Rs.5/- to Rs.10/- per sq.ft.

42. Taking judicial notice of the locality where the RC schedule property is situated and considering the present market value and escalation in prices of various commodities and commercial value of the property, both the Rent Controller as well as the Appellate Authority fixed the Fair Rent @ Rs.75/-per sq.ft.

43. Assailing the same, CRP.No.693 of 2019 was filed.

Contentions of both the counsel in CRP.No.693 of 2019:

44. Counsel for the petitioner contended that the respondent did not lead any evidence either oral or documentary other than that of the GPA Holder in regard to the rents prevailing in the locality.

Consideration by the Court of the pleas in CRP.No.693 of 2019

45. Since the RC schedule property is in a busy locality having all commercial activities near Secunderabad Railway Station and in view of the admissions of RW3 that the rents prevailing in the locality would be around Rs.100/- per sq. ft., it cannot be said that the Rent Controller or the Appellate Authority have committed any error in fixing Fair Rent @ Rs.75/- per sq.ft., in regard to the RC schedule property.

46. However, as regards the direction granted by the Rent Controller for enhancement of rent of the RC schedule property at 10% every year on the existing rate of rent, I am of the opinion that the said direction cannot be sustained in view of Section 5(1) of the Act, which directs such increase in fair rent only if the conditions mentioned therein are fulfilled i.e., that there is an addition, improvement or alteration at the landlord's expense of the RC schedule property. So to that extent it is liable to be set aside.

CONCLUSION :

47. Accordingly, CRP.No.699 of 2019 and CRP.No.818 of 2019 are both dismissed, and CRP.No.693 of 2019 is allowed in part setting aside the direction granted by the Rent Controller about the enhancement of rent @ 10% every year

on the existing rate of rent, but confirming the findings of the Rent Controller as well as the Appellate Authority that the fair rent ought to be Rs.75/- per sq. ft.

48. However, petitioner is granted time till 30.06.2019 to vacate the RC schedule property subject to the petitioner paying arrears of rent @ Rs.75/- sq. ft., from the date of filing of the RC.No.1 of 2016 till date within a period of six (06) weeks from the date of receipt of a copy of this order, and continue to pay it till 30.06.2019 on or before 5th of every succeeding month; and also subject to the condition of the petitioner filing an undertaking before this Court within one (01) week from the date of receipt of a copy of this order that petitioner would vacate RC schedule property/premises by 30.06.2019 and also that he would pay the arrears of rent and future rent as directed above. In default of compliance with any of the above directions, petitioner is liable to be evicted forthwith. No order as to costs.

49. Consequently, miscellaneous petitions pending if any, in all the three Revisions, shall stand closed.

M.S. RAMACHANDRA RAO, J

04th April, 2019.

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